

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF LOUISIANA  
LAFAYETTE DIVISION

PREPARED FOOD PHOTOS, INC., f/k/a ADLIFE )  
MARKETING & COMMUNICATIONS CO., INC., )  
  )  
   )  
Plaintiff,   )  
   )  
   )  
v.   ) No. 6:24-cv-00351-RRS-DGA  
   )  
   )  
CLYDE'S CHICKEN KING, INC. d/b/a             )  
CHICKEN KING,                                     )  
   )  
   )  
Defendant.   )

**STATEMENT OF MATERIAL FACTS  
ABOUT WHICH THERE IS NO GENUINE ISSUE**

1. Plaintiff Prepared Food Photos, Inc. was formerly known as AdLife Marketing & Communications Co. Inc. Complaint, page 1.
2. Plaintiff has maintained a large database of photographs of food for many years. Complaint ¶ 7; Levy Affirmation (“Aff.”) ¶ 6.
3. Until the year 2016, operating under its former name, plaintiff made the photographs in its database available for licensing on an individual basis through iStock, a subsidiary of Getty Images. Levy Aff. ¶ 6.
4. When iStock sold licenses for the use of plaintiff’s photographs, it did not tell plaintiff the name of the licensees. Levy Aff. ¶ 6 and Exhibit (“Exh.”) A.
5. The licenses that iStock sold for the use of plaintiff’s photographs were “royalty free,” meaning that the license was perpetual and could be used not only by the person using the license but also by that person’s clients, and the clients’ clients. Levy Aff. ¶ 7.

6. In November 2015, the cost of buying a license for a single stock photo was \$12. *Id.* ¶

9.

7. In 2015, Defendant Chicken King hired AT&T to create and maintain a website advertising Chicken King's business. Boudreux Aff. ¶ 3.

8. Chicken King provided AT&T with some photographs of its products that it had taken, but left it to AT&T to obtain other images as appropriate. *Id.* ¶¶ 3, 5, 15.

9. The website was available on the Internet by early 2016. *Id.* ¶ 6.

10. The photograph at issue in this case is labeled "ChickenFried013" and is the following:



Complaint ¶ 11.

11. ChickenFried013 was displayed on Chicken King's website as early as March, 2016. Boudreux Aff. ¶ 6.

12. Given this timing, it is possible that use of the photos was licensed through iStock. *Id.*; Levy. Aff. ¶¶ 6, 13.

13. When it filed this lawsuit, plaintiff did not know whether the use of Chicken Fried013 had been licensed to a company that was authorized by the license to use it on a client's website. Levy Aff. ¶ 7.

14. In 2016, plaintiff decided to pull its photos off iStock and handle its own licensing, Levy Aff. ¶ 13 and Exh. E.

15. Its purpose was to make money by making claims of copyright infringement and collecting damages from the alleged infringers. *Id.*

16. To this end, plaintiff registered the copyright in all of its photographs in a series of group registrations secured in 2016 and 2017. Levy Aff. ¶¶ 13, 14 and Exh. F.

17. The copyright in Chicken Fried013 was registered on September 20, 2016. Complaint ¶ 12.

18. Defendant's use of ChickenFried013 began before the date of registration, and the date of registration was long after the date of first publication. Boudreax Aff. ¶ 6; Levy Aff. ¶ 6.

19. In furtherance of its copyright enforcement business, plaintiff has both assigned a number of different employees to conduct reverse image searches, looking to find allegedly infringing users who can be challenged to pay damages, and employed third parties to conduct such searches. Levy Aff. ¶ 10 and Exh. A, D.

20. Based on the 2016 and 2017 registrations, over the past several years, plaintiff has filed more than 270 copyright infringement lawsuits. Levy Aff. ¶ 15 and Exh. F, citing PACER dockets.

21. Almost every one of these actions appears to end either in a default judgment or a confidential settlement. Levy Aff. ¶ 16.

22. The default judgments enumerated in one of plaintiff's recent motions for a default judgment that is cited in Mr. Levy's Affirmation (and in defendant's Memorandum of Law) mentions default judgments won by plaintiff over one sixteen-month period totaling nearly \$500,000. Levy Aff. ¶ 3.

23. Plaintiff's current Florida counsel sent 1800 demand letters between the time it took over the representation in 2021 and late 2023. Levy Aff. ¶ 17 and Exh. G, page 5.

24. These demand letters typically threaten to sue for more than \$100,000 unless the recipient pays a \$30,000 settlement within 21 days. Levy Aff. ¶ 18 and Exh. H.

25. On June 10, 2019, an AdLife employee located the Chicken Fried013 image on Chicken King's website in two separate searches roughly 3 hours apart. Levy Aff. ¶¶ 11-12 and Exh. D.

26. AdLife's president and owner Joel Albrizio sent Chicken King a demand letter threatening to sue for up to \$150,000 plus costs and attorney fees for copyright infringement unless Chicken King paid \$16,000. The letter was undated but included two pages bearing the date June 10, 2019 and including images of ChickenFried013. Boudreux Aff. ¶ 7 and Exh. A.

27. AdLife's president and owner Joel Albrizio sent Chicken King a second demand letter, labeled "2d Request," threatening to sue for up to \$150,000 plus costs and attorney fees for copyright infringement unless Chicken King paid \$8,000. The letter was undated but included two pages bearing the date June 10, 2019 and displaying an image of ChickenFried013. Boudreux Aff. ¶ 7 and Exh A.

28. On March 8, 2021, a Prepared Food Photos employee located Chicken Fried013 on Chicken King's website. Levy Aff. ¶¶ 11-12 and Exh. D.

29. Rebecca Jones, at that time the Intellectual Property Director of Prepared Food Photos, sent Chicken King a demand letter threatening to sue for up to \$150,000 plus costs and attorney fees unless Chicken King paid \$8,000. The letter was undated but it enclosed a page bearing the date March 8, 2021 and showing the image ChickenFried013. Boudreux Aff. ¶ 10 and Exh B.

Respectfully submitted,

/s/ Paul Alan Levy  
Paul Alan Levy (pro hac vice to be sought)

Public Citizen Litigation Group  
1600 20th Street NW  
Washington, D.C. 20009  
(202) 588-7725  
plevy@citizen.org

/s/ Heather Cross  
Heather Cross (La. Bar. No. 26249)

The Cross Law Firm  
6663 Jefferson Hwy  
Baton Rouge, Louisiana 70806  
(225) 256-0366  
hcross@lawacrossla.com

April 12, 2024

### CERTIFICATE OF SERVICE

I hereby certify that on **April 12, 2024** a copy of the foregoing pleading was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent to all counsel of record by operation of the Court's electronic filing system.

/s/ Heather A. Cross

HEATHER A. CROSS